



Billing Code 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R9-ES-2011-0095]

[MO 92210-0-0010 B6]

RIN 1018-AY31

Endangered and Threatened Wildlife and Plants; Technical Correction for African Wild

Ass

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Direct final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the revised taxonomy of *Equus asinus* (African wild ass) under the Endangered Species Act of 1973, as amended (Act). We are revising the List of Endangered and Threatened Wildlife to reflect the current scientifically

accepted taxonomy and nomenclature of this species. We revise the scientific name of this species as follows: *Equus africanus* (formerly *E. asinus*).

DATES: This rule will become effective on [Insert date 60 days after date of publication in the **Federal Register**], without further action, unless significant adverse comments are received by [Insert date 30 days after the date of publication in the **Federal Register**]. If adverse comment is received, we will publish a timely withdrawal of the rule in the Federal Register.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS-R9-ES-2011-0095; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, Branch Chief, Foreign Species Branch, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703-358-2171; facsimile 703-358-1735. If

you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

1) Purpose of the Regulatory Action

We are revising the List of Endangered and Threatened Wildlife to reflect the current scientifically-accepted taxonomy and nomenclature of the African wild ass. We revise the scientific name of this species as follows: *Equus africanus* (formerly *E. asinus*).

2) Major Provision of the Regulatory Action.

This action is authorized by the Endangered Species Act of 1973 (Act), as amended. We are revising the entry for “Ass, African wild” under MAMMALS by, in the Scientific name column, removing the words “Equus asinus” and adding in their place the words “Equus africanus”.

3) Costs and Benefits

This is a revised taxonomy action, and the Office of Management and Budget (OMB) has designated it as not significant. Therefore, we have not analyzed the costs or benefits of this rulemaking action.

Purpose of Direct Final Rule

The purpose of this direct final rule is to notify the public that we are revising the List of Endangered and Threatened Wildlife to reflect the scientifically accepted taxonomy and nomenclature of the African wild ass listed under section 4 of the Act (16 U.S.C. 1531 *et seq.*) This change to the List of Endangered and Threatened Wildlife (at 50 CFR 17.11(h)) reflects the most recently accepted scientific name in accordance with 50 CFR 17.11(b) and the *International Code of Zoological Nomenclature*.

We are publishing this direct final rule without a prior proposal because this is a noncontroversial action that does not alter the regulatory protections afforded to this species. Rather, it will differentiate the taxonomy of the African wild ass and the domesticated burro and/or donkey. Therefore, in the best interest of the public, we are taking this action in as timely a manner as possible, unless we receive significant adverse comments on or before the comment due date specified in the **DATES** section of this document. Significant adverse comments are comments that provide strong justification as to why this rule should not be adopted or why it should be changed. If we receive significant adverse comments, we will publish a document in the **Federal Register** withdrawing this rule before the effective date, and we will engage in the normal rulemaking process to promulgate these changes to 50 CFR 17.11.

Public Comments

You may submit your comments and materials regarding this direct final rule by one of the methods listed in the **ADDRESSES** section. Please include sufficient information with your comments that allows us to verify any scientific or commercial information you include. We will not consider comments sent by e-mail or fax, or to an address not listed in the **ADDRESSES** section.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information that you provide to us. Before including your address, phone number, e-mail address, or other personal information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this direct final rule, will be available for public inspection on the Internet at <http://www.regulations.gov> or by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Arlington, Virginia (see **FOR FURTHER INFORMATION CONTACT**). Please note that comments posted to <http://www.regulations.gov> are not immediately viewable. When you submit a comment, the system receives it immediately. However, the comment will not be publicly viewable until we post it, which might not occur until several days after submission.

Previous Federal Actions

The Endangered Species Preservation Act was passed in 1966 (the 1966 Act) and was limited in scope to “native” or resident species of fish or wildlife threatened with extinction (Public Law 89-669, 80 Stat. 926). Section 1(c) of the 1966 Act stated that native species of fish or wildlife could be regarded as endangered if the Secretary of the Interior found, after consultation with the affected States, that their existence was threatened because of certain enumerated factors. The Secretary was directed to publish in the **Federal Register** a list of those native species determined by the Secretary to be endangered. Such a list was published on March 8, 1969, at 34 FR 5034, without reference to foreign species, such as the African wild ass.

The Endangered Species Conservation Act of 1969 (ESCA, Public Law 91-135, 83 Stat. 275) expanded the 1966 Act by authorizing the listing of foreign species of fish and wildlife that were threatened with worldwide extinction. In a proposed rule published in the **Federal Register** on April 14, 1970 (35 FR 6069), the Secretary of the Interior set forth the original list of endangered foreign species entitled, “Appendix A: Secretary of the Interior’s List of Species and Subspecies Threatened with Extinction in Other Countries,” which contained the following entries:

Common name	Scientific name	Where found
Somali wild ass	<i>Equus asinus somalicus</i>	Ethiopia, Somalia
Nubian wild ass	<i>Equus asinus africanus</i>	Ethiopia

When the final rule setting forth the list of endangered foreign species was published on June 2, 1970, at 35 FR 8491, Appendix A was retitled to read, “Appendix A: United States’ List of Endangered Foreign Fish and Wildlife.” The above entries were condensed into one:

Common name	Scientific name	Where found
African wild ass	<i>Equus asinus</i>	Ethiopia, Somalia, Sudan

Except in very limited circumstances, the Act (1973) retained the lists published under the ESCA. At that time, the domesticated burro and donkey shared the same scientific name as the African wild ass (*Equus asinus*). The Act also abandoned the distinction between native and foreign lists, and a combined list was eventually published on September 26, 1975, at 40 FR 44412.

The present listing at 50 CFR 17.11(h), in the List of Endangered and Threatened Wildlife, for the African wild ass reads as follows:

Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Species rules
Ass, African wild	<i>Equus asinus</i>	Somalia, Sudan, Ethiopia	Entire	E ¹	3, 22 ²	NA ³	NA ³

¹ E means endangered.

² 3 is the code for 35 FR 8495; June 2, 1970. 22 is the code for 42 FR 15973; March 24, 1977.

³ NA means not applicable.

In a “Notice of Clarification of Status of Wild Burros” (March 24, 1977; 42 FR 15973), the Service stipulated that “the western wild burro has never been considered for designation as an endangered species. *Equus asinus* has always been treated administratively as a foreign species and was never included on a native list of endangered species. Furthermore, the procedural requirements for consultation with affected States during the listing of a native species were never complied with. An undesignated native population of a listed foreign species cannot be bootstrapped into coverage under the 1973 Act because of a clerical ambiguity with the list” (42 FR 15974). It is clear that the Service intended to list the African wild ass in its entirety, but not to list feral populations of once-domesticated burros and donkeys. However, the March 24, 1977, document failed to clarify the status of domesticated burros and donkeys.

Taxonomic Classification

Equus africanus

Gentry et al. (1996), in their recommendations to the International Commission on Zoological Nomenclature, addressed the concern that many domesticated species share the same scientific name with their wild ancestors: “The use of taxonomic names for wild species first described [for] domesticated forms is a retrograde step that will confuse not only biologists, paleontologists, archaeologists and those in applied fields of ecology, conservation, behavior studies and physiological resources, but also [enforcement] officials who have the job of sorting out endangered species” (Gentry et al. 1996, p. 32). They highlighted 15 species of mammals in which the domestic name precedes or are contemporary with their wild counterparts, one of

which was *Equus asinus*. The group recommended that the Commission adopt the specific name for wild populations for several taxa, including *E. africanus* (formerly *E. asinus*). The scientific name change of *Equus africanus*, Heuglin & Fitzinger (1866) from *Equus asinus* Linnaeus (1758) was adopted in March 2003 by the International Commission on Zoological Nomenclature (Commission, Opinion 2027 (Case 3010)). Based on the same opinion, the use of the *E. africanus* was also adopted by the IUCN *Red List of Threatened Animals* in 2008.

CITES

The Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) adopted the mammal reference Wilson & Reeder's *Mammal Species of the World, A Taxonomic and Geographic Reference*, 3rd Edition (2005), which recognizes the African wild ass as *Equus asinus* (CITES Resolution Conf. 12.11 (Rev. CoP15), *Standard nomenclature*). However, because of the wild and domestic taxonomy issue previously raised by the Commission and the problems it created for enforcement officials, the Parties agreed to deviate from Wilson and Reeder by adopting the name *Equus africanus* for the wild form of the African wild ass (listed in CITES Appendix I) and retaining the name *Equus asinus* for the domesticated form, which is not listed under CITES (CoP 15 Document 12, 2010).

The Service's objective is to provide the protections of the Act to endangered and threatened species, in this case the endangered African wild ass (*Equus africanus*) wherever found, and not the common domesticated or feral burro and donkey (*Equus asinus*). Pursuant to 50 CFR 17.11(b), "the Services shall use the most recently accepted scientific name. * * *

The Services shall rely to the extent practicable on the *International Code of Zoological*

Nomenclature.” Because the *International Code of Zoological Nomenclature*, as well as the IUCN and CITES, has accepted *Equus africanus* as the appropriate taxonomy for the African wild ass, and because this taxonomic change best reflects the scope of the Service’s listing for this species, the Service is hereby adopting the scientific name *E. africanus* for the African wild ass. The Service will use the scientific name *E. asinus* for the domesticated donkey or burro.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule; your comments should be as specific as possible. For example, you should tell us the numbers of the sections or

paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act

We have determined that an environmental assessment or an environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations adopted under section 4(a) of the Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of the references used to develop this rule is available upon request from the Foreign Species Branch (see **FOR FURTHER INFORMATION CONTACT** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

2. Amend § 17.11(h), the List of Endangered and Threatened Wildlife, by amending the entry for “Ass, African wild” under MAMMALS by, in the Scientific name column, removing the words “Equus asinus” and adding in their place the words “Equus africanus”.

Dated: May 17, 2012

Signed: Gregory E. Siekaniec

Director, Fish and Wildlife Service

[FR Doc. 2012-13421 Filed 06/04/2012 at 8:45 am; Publication Date:
06/05/2012]